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**Report to Congress
Pursuant to Section 1306 (c) of the
Department of Defense Authorization Act**

Section 1306 (c) of the Department of Defense Authorization Act of 1997 provides that, "the President shall submit to the Congress a report, in both classified and unclassified form, concerning the transfer from the People's Republic of China to the Islamic Republic of Pakistan of technology, equipment, or materials important to the production of nuclear weapons and their means of delivery." Section 1306 (c) also provides that the report shall contain responses in eight specific areas set forth therein. The classified version of this report contains more complete information.

This report, submitted in response to section 1306 (c), addresses each of the following eight areas in the order they are set forth in the statute.

"(1) The specific justification of the Secretary of State for determining that there was not a sufficient basis for imposing sanctions under section 2(b)(4) of the Export-Import Bank Act of 1945, as amended by section 825 of the Nuclear Proliferation Prevention Act of 1994, by reason of the transfer of ring magnets and other technology, equipment, or materials from the People's Republic of China to the Islamic Republic of Pakistan."

As stated in the Department of State's public announcement on May 10, 1996, the Secretary of State concluded that there was not a sufficient basis to warrant a determination that sanctionable activity occurred under section 2(b)(4) of the Export-Import Bank Act of 1945, as amended (Eximbank Act), that sanctions would not be imposed at that time and that Export-Import Bank operations in support of U.S. exports to China would return to normal. (During the time that the United States was reviewing the facts in this case, the Secretary, pursuant to the authority of the Export-Import Bank Act, as delegated by the President, had requested that the Export-Import Bank temporarily take no final action to approve or disapprove financing for China. This request was made to assure that no actions were taken that would be inconsistent with any possible outcome.)

The Eximbank Act, as amended by the 1994 Nuclear Proliferation Prevention Act (NPPA), provides that if the Secretary of State determines that a country has willfully aided or abetted a non-nuclear weapon state to acquire unsafeguarded nuclear material or a nuclear explosive device, he must so notify the Eximbank which in turn must not give approval to new loans, credits and guarantees to the offending country. When the United States receives information concerning activities inconsistent with the NPPA, an assessment is undertaken of whether or not the Eximbank Act sanctions have been triggered. This occurred in 1995, when the Administration received information involving

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nuclear cooperation between China and Pakistan, including shipments of ring magnets. In response, the Administration sought to gather more information from the Chinese government. The Administration also began discussions with China to establish a set of mutually-agreed basic ground rules to ensure that any nuclear cooperation with non-nuclear weapon states is consistent with China's obligations under the NPT. In addition to strengthening nonproliferation efforts, such ground rules would help to provide a basis for implementation of the 1985 U.S./China Agreement for Cooperation in the Peaceful Uses of Nuclear Energy (as discussed further in the responses set forth below).

This year, the United States and China have engaged in intensive discussions on the question of nuclear non-proliferation and nuclear-related exports. These discussions addressed U.S. concerns about Chinese nuclear cooperation with other countries, including the transfer of ring magnets. The subject of Chinese nuclear cooperation with Pakistan, including the transfer of ring magnets, was discussed between Secretary Christopher and Vice Premier Qian Qichen in The Hague in April. In the course of the Secretary's discussions, the United States received clarifications and assurances regarding China's policies toward nuclear nonproliferation and nuclear cooperation with other countries. In brief, the Chinese side assured the United States that China "will not provide assistance to unsafeguarded nuclear facilities," and that China "stands for the strengthening of the international nuclear nonproliferation regime, including the strengthening of safeguards and export control measures." These assurances were reflected in the public statement issued by the Chinese Foreign Ministry on May 11, 1996 and were reiterated in the plenary statement delivered by the head of the Chinese delegation to the 40th Session of the IAEA General Conference in September and reaffirmed during Secretary Christopher's visit to Beijing on November 20, 1996.

On the basis of a close review of all available information in the case, including the clarifications and assurances received from senior Chinese officials regarding past transfers and Chinese nuclear export control policies, the Secretary of State concluded that there was not a sufficient basis to invoke sanctions under the Eximbank Act of the NPPA.

"(2) What commitment the United States Government is seeking from the People's Republic of China to ensure that the People's Republic of China establishes a fully effective export control system that will prevent transfers (such as the Pakistan sale) from taking place in the future."

The United States undertook an intensive dialogue with China this year on the importance of export controls, partly in connection with our assessment of the ring magnet issue. In the Department of State's public statement of May 10, 1996, it was noted that "the United States looks forward to continuing consultations with China on export control policies and related issues. These consultations can help us to develop a common understanding on fully effective export control policies and practices and to strengthen national export control systems..."

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These export control consultations have continued, including detailed discussions in Beijing in July and in Washington in October at which U.S. export licensing agencies made detailed presentations on the nature and scope of their licensing responsibilities and operations. U.S. officials have urged China to develop and adopt nationwide nuclear export control legislation or regulations promptly and to assure that the controls are rigorous, comprehensive and applicable to all Chinese entities, public and private, civilian and military. During Secretary of State Christopher's November 20 meetings with Chinese Vice Premier Qian Qichen and other senior leaders, the United States learned that the Chinese government was in the process of formulating and adopting comprehensive nationwide regulations on nuclear export control. In addition to urging China to adopt these national nuclear controls, we are seeking to engage China in long-term bilateral cooperation on the technical aspects of setting up and implementing effective national export control systems.

"(3) A description of the pledges, assurances, and other commitments made by representatives of the People's Republic of China and the Islamic Republic of Pakistan to the Government of the United States since January 1, 1991, with respect to the nonproliferation of nuclear weapons or nuclear capable missiles, and an assessment of the record of compliance with such undertakings."

China's Nuclear Nonproliferation-Related Commitments

With respect to the nonproliferation of nuclear weapons, Chinese pledges, assurances and commitments derive from two publicly-taken actions. The first is China's accession in early 1992 to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). As a member of the NPT, China has committed under Article I of the Treaty "not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices." China has also committed under Article III.2 of the Treaty to require IAEA safeguards on source or special fissionable material and on equipment or material "especially designed or prepared" for the processing, use or production of special fissionable material, when these items are transferred to a non-nuclear weapons state. The second Chinese pledge is contained in the May 11, 1996 public statement by the Chinese Foreign Ministry regarding China's policy of providing no assistance to unsafeguarded nuclear facilities. It should also be noted that China has consistently stated that its nuclear cooperation with third countries is based on three principles: (1) guarantees of peaceful uses; (2) application of IAEA safeguards; and (3) no retransfer to a third country without China's consent.

The record of compliance with the Chinese undertakings pursuant to the NPT for the period December 1, 1994 to November 30, 1995, is set forth in the annual report

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prepared by the U.S. Arms Control and Disarmament Agency titled "Adherence to and Compliance with Arms Control Agreements."

Our current information does not provide a basis for concluding that China has acted inconsistently with its May 11, 1996 statement.

We have made clear to China on numerous occasions that our ability to engage in peaceful nuclear cooperation, and specifically to implement the 1985 Agreement for Peaceful Nuclear Cooperation, will depend on China's scrupulous observance of its May 11 pledge. Moreover, we have also outlined for China in great detail the application of U.S. sanctions laws, including potential consequences for transfers that would assist a non-nuclear weapons state to acquire unsafeguarded nuclear material or a nuclear explosive device.

China's Missile-Related Commitments

Effective March 1992, through a series of U.S.-Chinese diplomatic exchanges, China committed to abide by the 1987 Missile Technology Control Regime (MTCR) Guidelines and parameters. In October 1994 China signed a Joint Statement with the United States in which it reaffirmed its 1992 commitment, pledged not to export ground-to-ground MTCR-class missiles, agreed that missiles are judged to be "MTCR-class" based on their "inherent capability" and agreed to hold in-depth discussions with the United States on the MTCR. ("MTCR-class" missiles are unmanned delivery systems inherently capable of carrying a 500 kilogram payload at least 300 kilometers.)

The record of Chinese compliance with its missile-related commitments is set forth in the annual Report on the Proliferation of Missiles and Essential Components of Nuclear, Biological and Chemical Weapons. The most recent findings were submitted in August 1996.

Since the period covered by that report, the U.S. government has had several contacts with China on missile issues. Secretary Christopher met with Chinese Vice Premier/Foreign Minister Qian Qichen, in September 1996 and again in November. In November, nonproliferation meetings between U.S. and Chinese experts were followed by meetings on the same subject between Under Secretary Davis and Vice Foreign Minister Li Zhaoxing. These discussions were the most detailed on missile proliferation issues since 1993. This was positive, as was China's apparent willingness to hold further expert-level discussions. During his visit to China in November 1996 the Secretary and Vice Premier Qian reached agreement to hold regular dialogues at the senior level on arms control, global security and nonproliferation. These dialogues will provide the opportunity to review Chinese commitments on a regular basis.

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The U.S. government has long been concerned about reports that China may have exported M-11 missiles and technology to Pakistan. We continue to closely monitor and review all reports relating to these concerns, but we have not made a determination under U.S. law that China and Pakistan have engaged in sanctionable activity.

Pakistan's Nuclear Nonproliferation-Related Commitments

With respect to the nonproliferation of nuclear weapons, Pakistani pledges, assurances and commitments subsequent to January, 1, 1991 derive from public statements by senior Pakistani officials and from our private discussions with senior officials.

The official Pakistani position is that its nuclear program is only for peaceful purposes.

There have been many public Pakistani statements on nonproliferation, but the following are representative and considered authoritative. On February 8, 1992 Pakistani Foreign Secretary Shaharyar Khan was quoted in the New York Times as saying: "There was a capability in 1989 when the present Government came to power, and that means we could have moved forward in an unwise direction...But we didn't. Instead we froze the program." On April 11, 1995 then Prime Minister Benazir Bhutto, in a joint press conference in Washington D.C. with President Clinton, said: "...we have voluntarily chosen not to either assemble a nuclear weapon, to detonate a nuclear weapon, or to export technology." PM Bhutto also said publicly that Pakistan's Khushab production reactor, currently under construction, is a small research reactor, intended for peaceful purposes.

In 1995-96, we explained to the Pakistani government that moving ahead with partial implementation of the Brown Amendment is based on a continuation of Pakistan's current voluntary restraint in its nuclear and missile activities. We do not have a basis to conclude that Pakistan has altered the elements of the nonproliferation status quo that we discussed with Pakistani officials.

Nevertheless, Pakistan continues to guard its nuclear "option," and refuses to take important steps to adhere to international nonproliferation norms. Pakistan has voted in the U.N. General Assembly to endorse the CTBT but has decided not to sign it or the NPT, linking any decision to do so to whether India has signed and to its assessment of the prevailing regional security situation at the time. It has said some of its facilities, including the Khushab reactor, will not be placed under IAEA safeguards. It has stocks of previously produced HEU. We assess that Pakistan has the capability of assembling a nuclear explosive device. Pakistan's import from December 1994 to mid-1995 from a Chinese entity of several thousand custom-built ring magnets for its unsafeguarded enrichment program indicates that Pakistan is undertaking at least to refurbish its uranium

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enrichment centrifuges, but such a refurbishment would not necessarily involve an increase in enrichment levels.

Pakistan shows no signs of retreating from its policy of maintaining a deterrent to India's nuclear weapons capability. We closely monitor the situation in Pakistan.

Pakistan's Missile-Related Commitments

Pakistan has not provided the United States with pledges or other commitments with respect to the nonproliferation of nuclear-capable missiles. However, in April 1993 Pakistani Foreign Secretary Shaharyar Khan provided a formal response to U.S. concerns about the possible delivery by China of M-11 missiles to Pakistan. Khan stated that "Pakistan has not imported the so-called M-11 missiles, related equipment or technology. There is no missile sale to Pakistan as suggested recently by the United States."

"(4) Whether, in light of the recent assurances provided by the People's Republic of China, the President intends to make the certification and submit the report required by section 902(a)(6)(B) of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 2151 note), and make the certification and submit the report required by Public Law 99-183, relating to the approval and implementation of the agreement for nuclear cooperation between the United States and the People's Republic of China, and, if not, why not."

Since early 1995, the United States and China have been discussing the potential for implementing the 1985 agreement for peaceful nuclear cooperation, and specifically what steps the United States believes need to be taken in order to lay the basis for the statutorily-required certifications and reports to Congress. The clarifications and assurances provided by China, particularly in its May 11, 1996 statement, have been helpful to this process.

However, the Administration plans to continue its dialogue on this subject and on export controls in general in order to ensure that the United States and China have a common understanding on nonproliferation obligations, policies and practices. We also wish to be sure that China has taken steps to strengthen the application of export controls, thereby assuring that mechanisms are in place to effectively implement its nonproliferation obligations and its stated policy of not assisting unsafeguarded nuclear facilities. We are also monitoring Chinese activities carefully to determine whether Chinese behavior fully conforms with China's NPT obligations and May 11, 1996 assurances. Any decision related to implementation of the 1985 Agreement will also take into account China's nuclear export policy towards Iran.

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"(5) Whether the Secretary of State considers the recent assurances and clarifications provided by the People's Republic of China to have provided sufficient information to allow the United States to determine that the People's Republic of China is not in violation of paragraph (2) of section 129 of the Atomic Energy Act of 1954, as required by Public Law 99-183."

Effective and consistent implementation of the assurances and clarifications provided by China, including its May 11, 1996 statement, would provide evidence that China has not "failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such assistance, encouragement or inducement" (i.e., assistance, encouragement or inducement to a non-nuclear weapons state to engage in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices). The Administration believes that our discussions on the establishment of national nuclear export controls and our close monitoring of Chinese behavior, should continue in order to provide a basis for reaching the conclusion that China has effectively implemented its stated policy of not assisting unsafeguarded nuclear facilities and of not assisting a non-nuclear weapon state to acquire or develop a nuclear explosive device.

"(6) If the President is unable or unwilling to make the certifications and reports referred to in paragraph (4), a description of what the President considers to be the significance of the clarifications and assurances provided by the People's Republic of China in the course of the recent discussions regarding the transfer by the People's Republic of China of nuclear-weapon-related equipment to the Islamic Republic of Pakistan."

China's assurance of May 11, 1996, that it will not assist unsafeguarded nuclear facilities is significant because it brings China's nuclear cooperation and export control policies more in line with those of the world's other major nuclear suppliers. We hope that this Chinese undertaking, together with its efforts to strengthen export controls in China, and our ongoing consultations on export control policies and practices, will help ensure a common understanding of our NPT obligations and avoid future concerns about Chinese nuclear cooperation with other countries.

"(7) A description of the laws, regulations, and procedures currently used by the People's Republic of China to regulate exports of nuclear technology, equipment, or materials, including dual-use goods, and an assessment of the effectiveness of such arrangements."

China has maintained since the mid-1980's that its nuclear export policy is predicated on three guiding principles: all exports will be exclusively for peaceful use; all exports will be subject to IAEA safeguards; and no retransfers will occur without Chinese

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consent. On May 11, 1996 China stated that it would not provide assistance to unsafeguarded nuclear facilities.

Chinese officials have described their export control procedures to the United States. Several Chinese agencies apparently play a regulatory or licensing role for China's nuclear industry. The China National Nuclear Corporation (CNNC) and its regulatory body the China Atomic Energy Authority (CAEA) exercise a leading role in oversight and regulation of nuclear exports. According to Chinese nuclear officials, CNNC controls over 95 percent of all nuclear exports, but the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) has the ultimate responsibility for Chinese export controls.

Only two companies are authorized by the Chinese government to conduct exports of nuclear (i.e. not dual-use) items; both are within the CNNC. These companies are the Chinese Nuclear Energy Industry Corporation (CNEIC) and the China Zhongyuan Engineering Corporation (CZEC).

"(8) A description of the current policies and practices of other countries in response to the transfer of nuclear and missile technology by the People's Republic of China to the Islamic Republic of Pakistan and the Islamic Republic of Iran."

Most supplier countries have adopted policies of not transferring commodities and technologies to Iran and Pakistan that could further their nuclear and missile programs. Virtually all supplier governments have said they will not make available to China technologies that it needs to transfer nuclear power reactors to Iran and Pakistan. In addition, a number of states have pressed China through diplomatic channels not to cooperate with Iran's nuclear and missile programs, highlighting to Chinese leaders the destabilizing effect that sensitive transfers to Iran have on regional stability.

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